

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

MARITIME COMMUNICATIONS/LAND)
MOBILE, LLC)

EB Docket No. 11-71
File No. EB-09-IH-1751
FRN: 0013587779

Participant in Auction No. 61 and Licensee of Various)
Authorizations in the Wireless Radio Services)

Applicant for Modification of Various)
Authorizations in the Wireless Radio Services)

ENCANA OIL AND GAS (USA), INC.;)
DUQUESNE LIGHT COMPANY; DCP)
MIDSTREAM, LP; JACKSON COUNTY RURAL)
MEMBERSHIP ELECTRIC COOPERATIVE;)
PUGET SOUND ENERGY, INC.; ENBRIDGE)
ENERGY COMPANY, INC.; INTERSTATE POWER)
AND LIGHT COMPANY; WISCONSIN POWER)
AND LIGHT COMPANY; DIXIE ELECTRIC)
MEMBERSHIP CORPORATION, INC.; ATLAS)
PIPELINE – MID CONTINENT, LLC; DENTON)
COUNTY ELECTRIC COOPERATIVE, INC.,)
DBA COSERV ELECTRIC; AND SOUTHERN)
CALIFORNIA REGIONAL RAIL AUTHORITY)

Application File Nos.
0004030479, 0004144435,
0004193028, 0004193328,
0004354053, 0004309872,
0004310060, 0004314903,
0004315013, 0004430505,
0004417199, 0004419431,
0004422320, 0004422329,
0004507921, 0004153701,
0004526264, 0004636537,
and 0004604962

FILED/ACCEPTED

JUN 13 2011

Federal Communications Commission
Office of the Secretary

For Commission Consent to the Assignment of)
Various Authorizations in the Wireless Radio)
Services)

To: Marlene H. Dortch, Secretary

Attention: Richard L. Sippel, Chief Administrative Law Judge

MOTION TO ADOPT PROTECTIVE ORDER AND TO BIFURCATE HEARING

By their attorneys and pursuant Section 1.313 of the rules and regulations of the
Federal Communications Commission ("Commission"),¹ Atlas Pipeline – Mid Continent,
LLC ("Atlas"); DCP Midstream, LP ("DCP"); Denton County Electric Cooperative, Inc.

¹ 47 C.F.R. § 1.313 (2011).

No. of Copies rec'd 0+6
List A B C D E

d/b/a CoServ Electric ("CoServ"); Dixie Electric Membership Corporation, Inc. ("DEMCO"); Enbridge Energy Company, Inc. ("Enbridge"); EnCana Oil and Gas (USA), Inc. ("Encana"); Interstate Power and Light Company ("IPL"); Jackson County Rural Membership Electric Cooperative ("Jackson County RMEC"); and Wisconsin Power and Light Company ("WPL") (collectively, "Movants"), hereby submit this Motion to Adopt Protective Order and To Bifurcate Hearing in the captioned proceeding ("Motion").

Movants respectfully request that the Presiding Judge adopt a Protective Order with respect to the scope of issues that can be raised in any discovery served upon them under the Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing ("HDO") released in the above-captioned proceeding on April 19, 2011. Consistent with such a Protective Order, Movants also respectfully request that the Presiding Judge bifurcate this proceeding so that the qualifications of Maritime Communications/Land Mobile, LLC ("MC/LM") to be a Commission licensee, which is the primary focus of the HDO, can be adjudicated before any action is taken with respect to the captioned applications.

GOOD CAUSE EXISTS FOR GRANT OF THE MOTION

Under Section 1.313 of the Commission's Rules, the Presiding Judge may take action, including adopting a Protective Order and bifurcating this hearing, "for the purpose of protecting parties...or of providing for the proper conduct of the proceeding," which includes protecting a party "from annoyance, expense, embarrassment or oppression...."² As demonstrated herein, based upon this standard, good cause exists

² 47 C.F.R. § 1.313 (2011). Under Section 1.351 of the Commission's Rules, the Federal Rules of Evidence govern the scope of discovery in this hearing. 47 C.F.R. § 1.351 (2011). See also *Comcast Cable Communications, LLC*, 26 FCC Rcd 3726, 3730 note 43 (MMB 2011) (and cases cited therein). Adoption of a Protective Order under the Federal Rules of Evidence is appropriate for "forbidding inquiry

to grant this Motion.

The objectives of this proceeding will not be furthered by subjecting Movants to time-consuming and costly discovery. Movants' qualifications to be Commission licensees are not at issue in any way.³

Given the history of this proceeding, the ability of the Havens Parties (as defined in footnote 4 below) to use discovery and other hearing procedures for a fishing expedition must be circumscribed at the outset to ensure that such tactics are not repeated. Indeed, action must be taken now to prevent the Havens Parties from continuing to file repetitive, inconsistent, and improper pleadings,⁴ and to stop them from conducting what likely will be discovery "overkill," which regrettably already has started.⁵ Otherwise, Movants will be forced to expend considerable resources to determine which versions of a pleading should be addressed and to quash or limit endless discovery requests.

into certain matters, or [for] limiting the scope of discovery to certain matters...." Fed.R.Civ.P. 26(c)(1)(D) (2011).

³ This hearing was commenced to determine MC/LM's qualifications to be a Commission licensee. HDO at para. 1. None of the issues designated in the HDO involve Movants' qualifications.

⁴ The Havens Parties are Environmental LLC; Verde Systems LLC; Intelligent Transportation & Monitoring Wireless LLC; Telesaurus Holdings GB LLC; V2G LLC; Skybridge Spectrum Foundation; and Warren Havens. Examples of confusing, inconsistent and procedurally defective pleadings by the Havens Parties in this proceeding unfortunately are numerous, including: (i) a May 24, 2011, Opposition to Showing Pursuant to Footnote 7, which then was replaced by a different version; (ii) a May 31, 2011, Request for Admissions and Request for Documents ("Request"), which then was replaced by an Errata version; and (iii) a June 8, 2011, Motion to Enlarge Issues ("Issues Motion"), which then was replaced by an Errata version.

⁵ Concurrently herewith, Movants are filing an Opposition to the Request and Issues Motion.

A PROTECTIVE ORDER IS NEEDED TO ENSURE AGAINST UNNECESSARY DISCOVERY

The requested Protective Order must ensure that discovery of Movants is limited to relevant issues and it must ensure that any such discovery is not overly broad.⁶ For example, in the Request, the Havens Parties seek admissions by Movants with respect to their familiarity with all the claims made in the innumerable Petitions to Deny and related pleadings filed by the Havens Parties in this and other related proceedings.⁷ This Protective Order also should prohibit any discovery of the Movants with respect to their qualifications to be a Commission licensee because such inquiries, at this time, are irrelevant and beyond the scope of the HDO.⁸

BIFURCATION OF THE HEARING WILL FACILITATE DISCOVERY OF ISSUES DESIGNATED FOR HEARING

The issues with respect to discovery can be resolved by issuing a Protective Order consistent with Movants' recommendations above. This objective also can be achieved by bifurcating the hearing.

Discovery involving MC/LM's qualifications, which are at the heart of the HDO, likely will take several months to complete. Such discovery would take even longer, however, if Movants are subjected to the anticipated barrage of depositions,

⁶ Movants recognize that there might be limited circumstances that justify their participation in discovery at this stage of the hearing. This Protective Order could be limited to the extent necessary for the Enforcement Bureau and other parties to this hearing to corroborate evidence regarding MC/LM's qualifications to be a Commission licensee. For example, if MC/LM has made statements regarding its negotiations with a Movant related to its captioned application that are relevant to its qualifications to be a Commission licensee, that Movant could be subject to discovery for the limited purpose of confirming MC/LM's position.

⁷ Request at 10.

⁸ The Havens Parties seek admissions and production of documents with respect to such irrelevant issues as Movants' due diligence efforts concerning MC/LM, Movants' knowledge of the FCC's rules, and Movants' ability to use alternative frequency bands to meet their spectrum needs. Request at 11-15.

interrogatories and document production requests. This problem could be resolved if the Presiding Judge imposes strict limits on the amount of discovery that can be conducted and if the Presiding Judge bifurcates the hearing.

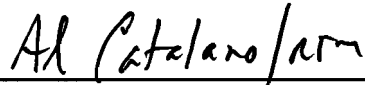
To ensure that this proceeding is completed in a timely manner, the Presiding Judge should consider establishing a specific deadline for discovery completion. Extensions of this deadline only should be permitted for compelling reasons outside the moving party's control. Further, the Presiding Judge should consider limiting the types of discovery that could be pursued (e.g., discovery would be limited to oral depositions or written interrogatories, but not both).

Discovery related to the essential issues designated in the HDO could be handled much more efficiently and expeditiously if the peripheral matters related to Movants are deferred until adjudication of MC/LM's qualifications. At that time, the Presiding Judge, based upon the hearing record, can determine if any issues remain unresolved that pertain to Movants, and, if so, then all parties would be given ample opportunity to conduct discovery with respect thereto.

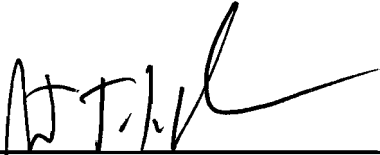
CONCLUSION

Movants' efforts to respond to any discovery at this time, in all reasonable probability, not only will be lengthy, convoluted and time consuming, but also will be premature and irrelevant. More importantly, Movants should not be forced at this stage of the hearing to engage in a tremendous waste of time, money and resources on discovery that clearly has no probative value with respect to the issues designated in the HDO.

WHEREFORE, for the foregoing reasons, Movants respectfully request that the Presiding Judge grant this Motion by adopting the requested Protective Order and by bifurcating the hearing.



Al Catalano (ajc@catalanoplache.com)
Catalano & Plache, PLLC
3221 M Street, NW
Washington, DC 20007
p: (202) 338-3200
Counsel for DEMCO



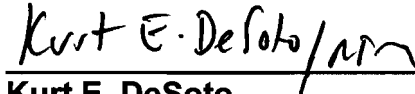
Robert J. Miller (rmiller@gardere.com)
Gardere Wynne Sewell LLP
1601 Elm Street, Suite 2800
Dallas, TX 75201
p: (214) 999-4219
f: (214) 999-3219
Counsel for CoServ

Respectfully submitted,



Jack Richards (richards@khlaw.com)
Wesley K. Wright (wright@khlaw.com)
Keller and Heckman LLP
1001 G Street NW
Suite 500 West
Washington, DC 20001
p: (202) 434-4210
f: (202) 434-4646

*Counsel for Atlas, DCP, Enbridge,
Encana and Jackson County RMEC*



Kurt E. DeSoto
(kdesoto@wileyrein.com)
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
p: (202) 719-7235
f: (202) 719-7049
Counsel for IPL and WPL

June 10, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of June, 2011, I served copies of the foregoing "Motion To Adopt Protective Order and To Bifurcate Hearing" by overnight delivery upon the parties listed below:

Honorable Richard L. Sippel*
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

P. Michele Ellison**
Chief, Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Hilary DeNigro**
Chief, Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Pamela S. Kane**
Deputy Chief, Investigations and Hearing Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Robert J. Keller
Law Offices of Robert J. Keller, P.C.
c/o Shainis & Peltzman, Chtd.
1850 M Street, Suite 240
Washington D.C. 20036
Counsel for Maritime Communications/Land Mobile, LLC

*Delivered Via Email on June 10, 2011

**Delivered by hand on June 13, 2011

Patricia J. Paoletta
Wiltshire & Grannis LLP
1200 18th Street, N.W., Suite 1200
Washington, DC 20036
Counsel for Maritime Communications/Land Mobile, LLC

EnCana Oil and Gas (USA), Inc.
ATTN: Dean Purcelli
1400 North Dallas Parkway, Suite 1000
Dallas, TX 75240

Duquesne Light Company
ATTN: Lee Pillar
2839 New Beaver Avenue
Pittsburgh, PA 15233

DCP Midstream LP
ATTN: Mark Standberry
6175 Highland Avenue
Beaumont, TX 77705

Jackson County Rural Membership Electric Cooperative
ATTN: Brad Pritchett
274 E. Base Road
Brownstown, IN 47220

Puget Sound Energy, Inc.
ATTN: Rudy Wolf
P.O. Box 97034
10885 NE 4th Street
Bellevue, WA 98009-9734

Enbridge Energy Company, Inc.
ATTN: Telecom
1001 G Street, N.W., Suite 500 West
Washington, DC 20001

Kurt E. DeSoto
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006
*Counsel for Interstate Power and Light Company and Wisconsin Power
and Light Company*

Dixie Electric Membership Corporation, Inc.
ATTN: John D. Vranic
16262 Wax Road
Greenwell Springs, LA 70739

Atlas Pipeline – Mid Continent LLC
ATTN: James Stepp
110 W 7th Street, Suite 2300
Tulsa, OK 74119

Mona Lee & Associates
ATTN: Mona Lee
3730 Kirby Drive, Suite 1200, PMB 165
Houston, TX 77098
Contact for Atlas Pipeline – Mid Continent LLC

Fletcher Heald & Hildreth, PLC
ATTN: Paul J. Feldman
1300 N. 17th Street, 11th Fl.
Arlington, VA 22209
Counsel for Southern California Regional Rail Authority

Environmental, LLC
2509 Stuart Street
Berkeley, CA 94705

Intelligent Transportation and Monitoring Wireless LLC
2509 Stuart Street
Berkeley, CA 94705

Skybridge Spectrum Foundation
2509 Stuart Street
Berkeley, CA 94705

Southern California Regional Rail Authority
ATTN: Darrel Maxey
700 S. Flower Street, Suite 2600
Los Angeles, CA 90017

Telesaurus Holdings GB LLC
2509 Stuart Street
Berkeley, CA 94705

Verde Systems LLC
2509 Stuart Street
Berkeley, CA 94705

V2G LLC
2509 Stuart Street
Berkeley, CA 94705

Warren Havens
2509 Stuart Street
Berkeley, CA 94705



Robert J. Miller

DALLAS 2239229v.1